

IN THE COURT OF APPEALS OF IOWA

No. 0-145 / 10-0105
Filed March 10, 2010

**IN THE INTEREST OF A.S. and D.B.,
Minor Children,**

J.B., Father of D.B.,
Appellant,

N.S., Father of A.S.,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District
Associate Judge.

Two fathers separately appeal from the order terminating their respective
parental rights to two children who were born to the same mother. **AFFIRMED.**

Yvonne Naanep, Des Moines, for appellant father of D.B.

John C. Heinicke of Kragnes & Associates, P.C., for appellant father of
A.S.

Christine Bisignano, Windsor Heights, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell,
Assistant County Attorney, for appellee State.

Charles Fuson of the Youth Law Center, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

MANSFIELD, J.

On January 4, 2010, the juvenile court terminated the parental rights to two girls, A.S. (born May 2007) and D.B. (born June 2008). Jessica was the mother of both girls; Nicholas was the father of A.S., and Jeremiah was the father of D.B. Nicholas and Jeremiah both appeal the termination order.

Nicholas and Jessica initially came to the attention of the Iowa Department of Human Services (DHS) in 2004, before A.S. or D.B. were born. In 2006, their parental rights to their two existing children were terminated.

In 2008, the family again came to DHS's attention when Nicholas struck Jessica while A.S. was in her arms, and while she was pregnant with D.B. This resulted in a confirmed finding of child abuse and the provision of certain services to the family. In April 2009, Jessica assaulted her grandmother, punching her in the face and head, and pulling her hair, in the presence of A.S. and D.B. Jessica was arrested and jailed. This resulted in the removal of the children and their placement with Jessica's grandmother. By court order entered May 28, 2009, the children were adjudicated children in need of assistance. In August 2009, paternity testing revealed that Jeremiah was the father of D.B.

On October 15, 2009, the State petitioned for termination of parental rights to A.S. and D.B. After some delay due to the recent judicial branch budgetary cuts, the hearing took place on December 29, 2009. At the hearing, Jessica testified she was homeless. She said she was not in a position to take A.S. and D.B. home, now or in the near future, and would not oppose termination of her parental rights.

At the time of the termination hearing, Nicholas was serving a five-year prison sentence for failure to register as a sex offender.¹ His tentative discharge date is February 15, 2012. Due to his incarceration, he has not seen A.S. since May 2008.

Jeremiah also was incarcerated when the termination hearing took place. He has been in prison since September 2008. He has a conviction for intimidation with a dangerous weapon, and his probation was revoked. At the time of the hearing, he was being held at the Fort Dodge Correctional Facility but was on the waiting list for a transfer to the halfway house at Fort Des Moines. His discharge date was July 2010, and he expected to enter the halfway house within a couple of months. Jeremiah has never met D.B. Although he acknowledged having been “told there was a possibility she was mine,” he took no interest in D.B. until he was in prison and his paternity had been confirmed.

One week after the hearing, the juvenile court issued an order terminating the parental rights of Jessica pursuant to Iowa Code sections 232.116(1)(d), (g) and (h); Nicholas pursuant to sections 232.116(1)(b), (d), (e), (g), and (h); and Jeremiah pursuant to sections 232.116(1)(b), (d), (e), and (h). Both fathers appeal.

We review termination proceedings de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court’s factual findings, but are not bound by them. *Id.*

¹ Nicholas has a prior conviction for assault with intent to commit sex abuse and has been on the sex offender registry since 2002.

Nicholas does not dispute that at least one statutory ground for termination has been met. He argues instead that termination is not in the best interests of A.S., see Iowa Code § 232.116(2), and termination would be detrimental to the child due to the closeness of the parent-child relationship. See *id.* § 232.116(3)(c). Upon our de novo review, we disagree with Nicholas's arguments.

In considering a child's best interests, we give "primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *In re P.L.*, ___ N.W.2d ___, ___ (Iowa 2010) (quoting Iowa Code § 232.116(2)). Nicholas is in prison and is not due to be released until February 2012. Nicholas also has a poor track record with his other children, having had his parental rights terminated to two of them and having effectively abandoned a third. When Nicholas was asked whether he might have fathered other children, in addition to A.S. and those three, he testified, "I'm not sure about any others right now." The testimony continued:

Q. You're not sure if you have any other children? A. No.

Q. But you might? A. You never know.

See *In re C.K.*, 558 N.W.2d 170, 162 (Iowa 1997) (In seeking out a child's best interests, "we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future."). Termination of Nicholas's parental rights is in A.S.'s best interests.

Nicholas has also failed to show termination would be detrimental to A.S. due to the closeness of their parent-child relationship. Nicholas has not seen

A.S. since May 2008, when A.S. would have been approximately a year old. It is difficult to believe there is much of a bond at this point. Further, Nicholas admitted to a weak relationship with A.S.

Q. What kind of a relationship do you believe you had with [A.S.]? A. Well, not very big because me and Jessica were arguing all of the time, so that didn't help out with that.

A.S. is two and a half years old and is in need of permanency. In short, we agree with the juvenile court that termination of Nicholas's parental rights is in A.S.'s best interests, and that termination would not be detrimental to A.S. due to the closeness of the parent-child relationship. See *P.L.*, ___ N.W.2d at ___ (undertaking this analysis).

Turning to Jeremiah's appeal, he argues first that reasonable services were not provided by DHS. See Iowa Code § 232.99(3). However, he does not specify the services he should have received. He argues, merely, that he should have received a social history worksheet from DHS. However, even if he had received that worksheet, Jeremiah does not identify the actual services that could or should have been provided while he was in prison. See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (holding that while DHS has an obligation to make reasonable efforts toward reunification, a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing or the issue is considered waived for further consideration on appeal).

Additionally, Jeremiah argues that termination was not in D.B.'s best interests and that the juvenile court instead should have continued the matter until his release from incarceration. Upon our de novo review, we disagree. D.B.

is already a year and a half old and in need of permanency. Jeremiah has never seen D.B. Nothing about Jeremiah's recent past suggests he would make a good parent to D.B. Jeremiah has a 2007 conviction for assault, a 2008 conviction for intimidation with a dangerous weapon, and a probation revocation. "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for a child." *P.L.*, ___ N.W.2d at ____.²

For the foregoing reasons, we affirm the judgment of the juvenile court.

AFFIRMED.

² In his petition on appeal, Jeremiah mentions his own hearing testimony that his grandfather was Native American, although he was not sure of the tribe. Jeremiah did not state and does not contend that he (Jeremiah) is a member of any tribe. Jeremiah does not argue that the Indian Child Welfare Act (ICWA) applies to this case. See 25 U.S.C. § 1903(4) (defining Indian child as someone who (a) is a member of an Indian tribe or (b) is eligible for membership and the biological child of a member). In light of the foregoing, we do not believe this case implicates ICWA or its Iowa counterpart. See *In re A.W.*, 741 N.W.2d 793, 812 (Iowa 2007) (upholding constitutional challenge to the Iowa ICWA to the extent it differs from the federal definition of an "Indian child").